"District Court of the United States"
District of Minnesota

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
Versus)
) **Case No. 16-cv-02547 (SNR/LIB)**
William J. Mooney, *in propria persona*;)
And, Joni T. Mooney, *in propria persona*;)
And, Harbor Holding, Mid-Atlantic)
Trustees and Administrators.)
)
Defendants,)

Motion to Dismiss and Motion to Vacate Judgment

Comes now William Joseph Mooney and Joni Therese Mooney ("Mooneys") with the Motion to Dismiss and Motion to Vacate Judgment in **the Court ("District Court of the United States") from *this Court* ("United States District Court," *i.e.* ("USDC"))** that is operating under the codified 28 U.S.C. § 132.

The subject matter jurisdiction arising under Article III Sections 1 and 2 of the Courts of the United States exercising the judicial Power of the United States in all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, the Treaties made, or which shall be made, under their Authority can be raised at any time.

As held in *Owen Equipment and Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) "It is a fundamental precept that federal courts are courts of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded."

In *Statterlee v. Commissioner of Internal Revenue, et al.,* 195 F.Supp.3d 327 (Dist.Cir. 2016), to wit:

> Under Rule 12(b)(1), the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *Shekoyan v. Sibley Int'l Corp.*, 217 F.Supp.2d 59, 63 (D.D.C.2002). Federal courts are courts of limited jurisdiction and the law presumes that "a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994); *see also Gen. Motors Corp. v. EPA*, 363 F.3d 442, 448 (D.C.Cir.2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction."). "[B]ecause subject-matter jurisdiction is 'an Art[icle] III as well as a statutory requirement ... no action of the parties can confer subject-matter jurisdiction upon a federal court.' " *Akinseye v. District of Columbia*, 339 F.3d 970, 971 (D.C.Cir.2003), quoting *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).
>
> When considering a motion to dismiss for lack of jurisdiction, unlike when deciding a motion to dismiss under Rule 12(b)(6), the court "is not limited to the allegations of the complaint." *Hohri v. United States*, 782 F.2d 227, 241 (D.C.Cir.1986), *vacated on other grounds*, 482 U.S. 64, 107 S.Ct. 2246, 96

L.Ed.2d 51 (1987). *333 Rather, "a court may consider such materials outside the pleadings as it deems appropriate to resolve the question [of] whether it has jurisdiction to hear the case." *Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F.Supp.2d 18, 22 (D.D.C.2000), citing *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C.Cir.1992); *see also Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C.Cir.2005).

This Court is not exercising the judicial Power of the United States and ***this Court*** does not Arise under Article III Section 1 and 2 exercising the judicial Power of the United States in all Cases in Law and Equity, but the United States District Court ("USDC") is operating with the codified authority of as evidenced by the Public Record of **Attachment 1—28 U.S.C. § 132 with Reviser's Notes ("Attach 1—28 U.S.C. § 132").**

This is an excerpt of **Attach 1—28 U.S.C. 132** of public record that ***this Court*** **shall take judicial Notice thereof,** being *Title 28, United States Code Congressional Service, New Title 28— and Judicial Procedure Pages 1487-2174, 80th Congress—2nd Session, Epochal Legislation, West Publishing 1948*—pg. i—"augmented by **expert revisers** and consultants"—*New Title 28, United States Code, Judiciary and Judicial Procedure With* ***Official*** *Legislative History and* ***Reviser's Notes. Page 1521—28*** **U.S.C § 132. Creation and composition of district courts**

(a) There shall be in each judicial district a district court which shall be a court of record known as the **United States District Court for the district.**

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided **by law, or rule or order of court, the judicial power of a district court** with **respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.**

***Page 1732*—Section 132—Revised [Reviser's Notes]**—Section 132-Section Revised

Based on title 28, U.S.C., 1940 ed., § 1, and section 641 of title **48, U.S.C., 1940 ed., Territories and Insular Possessions** (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 19).

Section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

> **Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed. [Territories and Insular Possessions], which applied only to the Territory of Hawaii. The revised section, by extending it to all districts, merely recognizes established practice.**
>
> Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in sections 133 and 134 of this title. The remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.

As to reviser's notes, it is well settled that the reviser's notes are authoritative in interpreting the Code. See *United States v. National City Lines,* 337 U.S. 78, 81 (1949); *Stainback v. Mo Hock Ke Lok* Po, 336 U.S. 368 n. 12 (1949); *Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency*, 422 U.S. 289, 309 (1975); *Western Pac. R. Corp. v. Western Pac. R. Co.*, 345 U.S. 247, 254-255 (1953); *Pope v. Atlantic Coast Line R.Co.*, 345 U.S. 379, 384 (1953).

An essential element of the "**judicial Power of the United States**" arises under Article III Section 1 "**The judicial Power of the United States**, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . . Section 2. The **judicial Power** shall extent to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" irrevocably precludes "The **judicial power of a district court** [28 U.S.C. § 132(c), *ibid.*] **[derived from the Territory of Hawaii,**

ibid. **]** . . . may be exercised by a single judge," is merely codifying use of an "inquisition" CON. See *Lawkowski v. Spellings*, 443 F.3d 930, 941 (7th Cir. 2006) It should not be undertaken in the absence of an actual claim for this form of relief and full briefing by the parties. *See McNeil v. Wisconsin,* 501 U.S. 171, 181 n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) (" What makes a system adversarial rather than inquisitorial is ... **the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself,** but instead decides on the basis of facts and arguments pro and con adduced by the parties.").

When, as here, a matter is moot or the court otherwise lacked jurisdiction, the judgment amounts to an impermissible advisory opinion, a legal nullity, and is void. In *Williamson v. Berry*, 49 U.S. 495, 541 (1850) "But if it [the court] act without authority, its judgments and orders are a nullity; they are not voidable, but simply void . . ."; *Elliott v. Peirsol's Lessee*, 26 U.S. 328, 329 (1828) ""But if it [the court] act without authority, its judgments and orders are a nullity; they are not voidable, but simply void . . ." See also *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353, 354 (1920). In *Dynes v. Hoover*, 61 U.S. 65, 66 (1857) as follows:

> The following well-settled principles of law cannot be controverted: 'That when a court has jurisdiction, it has a right to decide every question before it; and if its decision is merely *erroneous*, and not *irregular and void*, it is binding on every other court until reversed. But if the subject-matter is not within its jurisdiction, or where it appears, from the conviction itself, that

> they have been guilty of an excess, or have decided on matters beyond and not within their jurisdiction, **all is void, and their judgments, or sentences, are regarded in law as nullities**. They constitute no justification; and all persons concerned in executing such judgments, or sentences, are trespassers, and liable to an action thereon.' (Numerous case cites omitted) (Emphasis added)

Upon checking the public record there never was an appearance in the public record of the "**Counsel for the United States of America**," being the alleged Plaintiff. Therein as a matter of law this instant case must be dismissed with prejudice.

There is another CON of the highest degree as the Plaintiff is the "United States of America is a sovereign body politic" was evidenced in **Attachment 2—One Hundred Eight (10) of "United States of America is a sovereign body politic." ("Attach 2—USA Sovereign Body Politic").**

Let ***this Court*** **take judicial Notice that** the Mooneys renounce, rescind our signatures and abjure from all of the following: all adhesion contracts and documents known or unknown; and, all implied-in-law contracts and documents known or unknown, all "public rights" doctrine contracts and documents known or unknown; and, all other contracts, agreements and documents that would in any way attach or subject me by any means known or unknown including "local and private law" Statutes, both State and Federal; and, everything clothed by and through or under including but not limited to the new 68 Stat. 869-1009 (1948) "United States District Courts" codified in 28 U.S.C. § 132(c)

"**United States of America is a sovereign body politic**" in use since the passing of the Seventeenth Amendment in 1913 wherein the Legislatures of the several States no longer have standing to elect the Senators of the United States and the citizens of the several States no longer have standing to elect the members to the House of Representatives with the only exception being under the Law of Necessity as required. Remembering that "sovereignty" issues are secured in Tenth Amendment "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, **are reserved to the States respectively, or to the people**." See also *Ex parte Commonwealth of Virginia*, 100 U.S. 339, 346, 358 (1879) [346] "No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact" . . . [356] But by none of the articles was any interference authorized with the purely internal affairs of the States, or with any of the instrumentalities by which the States administered their governments and dispensed justice among their people; and they declared in terms that **each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right which was not by the articles expressly delegated to the United States in Congress assembled.** . . . [357] The new government being one of **granted powers**, its authority was limited by them and such as were necessarily implied for their execution. But lest, from a misconception of their extent, these powers might be abused, the **Tenth Amendment was at an early day adopted,** declaring that 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people.' . . . [358] "The general government and the States, although both exist within the same

territorial limits, **are separate and distinct sovereignties**, acting separately and independently of each other, within their respective spheres." Therein *flows a fortiori* that the entity "**United States of America is a sovereign body politic**" is unconstitutional, illegal, and unlawful (there are in excess of one hundred eight (108) cases in the United States District Courts ("USDC") from the Department of Justice with "United States of America is a sovereign body politic;" and further, there various numbers of each of the "States" in the same Complaint in the USDC Complaints with the Department of Justice with the "United States of America" on taxation other issues); and, is **Treason** as this entity by and with its participants, *i.e.* "a body of people" are "levying of war" or "levying war" on any Statute of the United States as held in *Ex parte Bollman and Ex parte Swartwout*, 8 U.S. 75, 127-128 (1807).

And further, the *United State of America v. Mooney, et al.*, 0-16-cv-2547 (D.Minn. 2018) Docket 143, pg. 5, Memorandum Opinion and Order of Judge Susan Richard Nelson, *i.e.*, holding being "[T]here is **no legal distinction between** the **United States and the United States of America.** In rejecting this argument when it was raised on summary judgment, Magistrate Judge Brisbois correctly noted that the same argument has been raised and rejected repeatedly in cases throughout the federal courts. See, e.g., *United States v. Garcia*, No. 13-cr-164 2013 WL 5954688, *5 (D. Minn. Oct. 4, 2013) "*United States v. Wacker*, 173 F.3d 865, *2 (10th Cir. Mar. 31, 1999)." In *Garcia, ibid.,*" The "**United States**" and the "**United States of America**" are one and same." In *Wacker, ibid.,* "The **"United States" and "United States of America" are synonymous terms."** Take

judicial Notice that in the United States Federal Court of Claims Rule 4 "[O]nly the **United States** is the properly the named Defendant." Therein a Complaint with "United States" *a/k/a* "United States of America" in the USDC's; and, the "States" being a "state of the United States" in the same USDC's Cases opens the jurisdictional subject matter for taxations issues, State Plan issues and more with the appeal option open to the United States Federal Circuit Court of Appeals, being the only bona fide Article III Appellate Court other that the Supreme Court of the United States.

And further Congress may vest the Courts of the District of Columbia with administrative or legislative functions, which are not properly judicial, but it may not do so with any Federal Court established arising under Article III section 2 of the Constitution of the United States either directly or by appeal including any District Court of the United States, any United States District Court, any Circuit Court of Appeals and the Supreme Court of the United States. *Postum Cereal Co, Inc. v. California Fig Nut Co.*, 272 U.S. 693, 700-701 (1927).

And further, the plenary Power of Congress in the "District of Columbia" is evidenced by "Acts of Congress," "Laws of Congress" or "laws of the United States of America" including but not limited to the "Internal Revenue" Taxation of the National Government that is lawfully and legally confined within the District of Columbia under the Plenary Power of Congress or if someone knowingly and intentionally submits to the "local or private" law of the status of being a "citizen of the United States." I do not knowingly or tacitly clothe myself to the issues of this paragraph and do abjure same with the

exception of the law of necessity.

The Mooneys do incorporate the their individual Verified Affidavits into this Motion to Dismiss and Motion to Vacate.

The Mooneys have ZERO confidence that ***this Court*** will never admit to the lack of Subject Matter Jurisdiction arising under Article III sections 1 and 2; and will never admit to the lack of Personal Jurisdiction; therein the Mooneys are giving ***this Court*** notice that that they will be filing into the United States Federal Court of Claims Article as that is the only Court of the United States along with the United States Federal Circuit Court of Appeals that is a bona fide Article III Court that is exercising "subject matter jurisdiction" as evidenced in **Attachment 3—Senate Report No. 96-304 (Attach 3—Sen.Rpt. 96-304).** ***This Court*** is to take judicial Notice of **Attach 3—Sen.Rpt. 96-304** and especially pages 8-10.

And further, Verified Affidavits of William Joseph Mooney and Joni Therese Mooney are incorporated into this Motion to Dismiss and Motion to Vacate.

And further, the Mooneys will probably have this Motion to Dismiss and Motion to Vacate on some procedural violation but this is still in the Record for examination by the United States Federal Court of Claims.

Therefore as a matter of law, ***this Court*** is required to dismiss this instant case with prejudice as so plead in this Motion and in the Verified Affidavits remembering that the Mooneys are not "citizens of the United States" but are "citizens of Minnesota," being one of the several States.

And further, the Mooneys owe permanent allegiance to the United States as codified in 8 U.S.C. § 1101(22)(B) "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

My Hand, William Joseph Mooney

My Hand, Joni Therese Mooney

Jurat

Minnesota Republic]
] ss
Morrison County]

JENNIFER MARIE BURGGRAFF
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2023

On this 13th day of June 2018,

William Joseph Mooney + Joni Therese Mooney, personally appeared before me, the undersigned officer authorized to administer oaths, known to me the person described in the foregoing answer who acknowledged that he/she executes the same in the capacity stated for the purpose herein contained. In witness whereof, I have hereunto set my hand and official

seal.

notary: Jennifer M. Burggraff

My Commission expires: 1-31-2023